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**WTO Appellate Body Upholds Key Provisions of
U.S. Anti-Subsidy Law Involving Steel Case**

WASHINGTON – The Office of the United States Trade Representative announced today that the Appellate Body of the World Trade Organization (WTO) upheld key provisions of a U.S. trade law that provides a remedy against unfairly subsidized imports. In a case involving subsidized German steel, the Appellate Body found that the U.S. trade laws were consistent with U.S. WTO obligations, rejecting a challenge by the European Union (EU).

“U.S. trade laws are the most comprehensive in the world, and play a key role in making sure American workers, businesses, and farmers can compete on a level playing field,” said U.S. Trade Representative Robert B. Zoellick. “This is a victory not only for the United States, but for the multilateral trading system. With today’s report, the Appellate Body has done what it should – interpret the WTO agreements as written.”

The provisions at issue involve so-called “sunset reviews.” In a sunset review, which is a procedure required by the WTO Subsidies Agreement, authorities review an outstanding countervailing duty order every five years to determine whether the imposition of special countervailing duties remains necessary to counteract subsidized imports that cause harm to a competing U.S. industry. In challenging the U.S. countervailing duty remedy, the EU alleged that certain aspects of the U.S. sunset review regime were inconsistent with the requirements of the Subsidies Agreement.

The Appellate Body report involved a review of an earlier WTO panel report in a dispute arising out of a U.S. sunset review of a countervailing duty order on imported corrosion-resistant carbon steel products from Germany. Although today’s report primarily addressed the EU challenges to the U.S. countervailing duty law itself, the earlier panel report had found that one aspect of the sunset review on German steel was inconsistent with the Subsidies Agreement. The United States did not appeal this particular finding to the Appellate Body.

Background:

The WTO Appellate Body report released today arose out of a sunset review conducted by the U.S. Department of Commerce (Commerce) of the 1993 countervailing duty order on corrosion-

resistant carbon steel products from Germany. In August, 2000, Commerce issued a final sunset review determination to the effect that revocation of the order would likely lead to a continuation or recurrence of subsidization. In December, 2000, the U.S. International Trade Commission (ITC) determined that revocation of the order would likely lead to a continuation or recurrence of material injury to the U.S. industry concerned. In light of these two findings, Commerce determined to leave the order in place.

On November 10, 2000, the EU requested dispute settlement consultations, and on August 8, 2001, the EU requested the establishment of a WTO dispute settlement panel. The EU challenged the specific Commerce determination, as well as certain aspects of the sunset review provisions of the U.S. countervailing duty law. The WTO panel circulated its final report on July 3, 2002. Although the report largely favored the United States, the panel did find against the United States on a few issues. Accordingly, the United States appealed, and the EU subsequently filed a cross-appeal with respect to the issues on which it lost.

Taking the Appellate Body and panel reports together, the following findings were made:

- The Appellate Body affirmed the panel's finding that the U.S. system of automatically self-initiating sunset reviews is WTO-consistent. The EU claim to the contrary, if accepted, would have imposed an additional burden on U.S. industries seeking relief from subsidized imports.
- The Appellate Body reversed the panel and found that the standard used in sunset reviews by Commerce for purposes of determining when subsidies are *de minimis* – and, thus, non-actionable – was not WTO-inconsistent. Here, too, the EU claim, if accepted, would have weakened the remedy against subsidized imports.
- The Appellate Body affirmed the panel's finding that the U.S. countervailing duty law is not inconsistent with an authority's obligation under the Subsidies Agreement to determine the likelihood of continuation or recurrence of subsidization in a sunset review.
- The Appellate Body affirmed the panel's finding that certain EU claims were not properly before the panel. These claims involved the EU's allegations that with respect to the U.S. countervailing duty law in general, and the sunset review on German steel in particular, interested parties are not given "ample opportunity" to submit evidence, as required by the Subsidies Agreement.
- The EU did not appeal the panel's finding that the EU claim concerning the U.S. "expedited sunset review" procedure was not properly before the panel.
- The United States did not appeal the panel's finding that in the particular sunset review on corrosion-resistant carbon steel products from Germany, Commerce failed to properly determine whether a continuation or resumption of subsidization was likely.

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